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Internet Access as a New Human Right? State of the Art on the Threshold of 2020

Introduction

The recognition and operationalization of a new human right is a long process that requires the consensus of international actors, the common accord of academics and experts in its conceptualization and, last but not least, the willingness of governments to bind themselves to another human rights obligation. This is why it took more than 25 years from launching the debate on the right to water and sanitation¹ to the adoption of the separate General Comment by the Committee on Economic, Social and Cultural Rights (2002) and the General Assembly resolution on this matter (2010). Yet in the 1990s one could find major studies from the field of human rights that did not mention the issue of water at all.² Suffice to say that the case of the right to water and sanitation was relatively straightforward, as water is mentioned *expressis verbis* in Article 11 of the International Covenant on Economic, Social and Cultural Rights³ (hereafter IC-ESCR) and the inclusion of this specific right was indeed discussed during the negotia-

1 One of the resolutions adopted by the UN Water Conference on 1977 stated *expressis verbis* that “all peoples (...) have the right to have access to drinking water in quantities and of a quality equal to their basic needs”. See: United Nations, Report of the United Nations: Water Conference in Mar del Plata, New York 1977, p. 66. This study draws a parallel between the right to Internet access and the right to water, for several reasons. Firstly, both rights (if the right to Internet access is to be ever recognized) are protected under the ICESCR. Secondly, the right to water was originally not perceived as a separate human right and has only recently been recognized as such. It may be that the right to Internet access will follow the same path. Thirdly, the enjoyment of both rights imposes on states not only the duty of non-interference, but the duty to provide services to the society, i.e. to develop water facilities in the case of the right to water and to expand Internet infrastructure in the case of the right to Internet access.

2 P. H. Gleick, *The human right to water*, in: “Water Policy” 1998, no. 1, pp. 488–489.

3 UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993.

tions of the Covenant.⁴ Moreover, the issue of access to water had been already recognized in various international documents, including *inter alia* treaties.⁵ Some may even say that this long process was rather an emancipation than recognition of a purely new right, as the importance of access to water in the enjoyment of the right to an adequate standard of living was indeed explicitly mentioned in Art. 11 of the ICESCR.

Knowing these dynamics, we should be skeptical when reading another newspaper headline announcing that UN has recognized Internet access as a human right. Such headlines had flashed around the world for the first time in 2011, when the Human Rights Council adopted the report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue. The majority of media outlets did not bother to check whether the reports of Special Rapporteurs are sources of law.⁶ Nevertheless, the report did indeed stress that cutting off users from Internet access, regardless of the justification provided, is disproportionate and thus violates Article 19 of the International Covenant on Civil and Political Rights (hereafter ICCPR).⁷ Moreover, Frank La Rue pointed out that ensuring universal access to the Internet should be a priority for all states.⁸ These observations, however, remained nothing more than merely recommendations. But either way, the report elevated the so far mostly academic debate about the nexus between human rights and the Internet to the UN fora. Another milestone was achieved in 2016 with the adoption of the resolution on the promotion, protection and enjoyment of human rights on the Internet by the Human Rights Council.⁹ This time, once more, media disseminated information that the UN had declared a new right, namely the right to Internet access. The resolution itself, however, did not declare a new right, but rather enumerated well-established rights for the realization of which the Internet has become an indispensable means, e.g. the right to freedom of expression, the right to freedom of peaceful assembly and association and the right to education. In this light, the recent resolution should be interpreted rather as another step on the path than the final act of declaring a new right.

4 S. L. Murthy, *The Human Right(s) to Water and Sanitation: History, Meaning, and the Controversy Over – Privatization*, in: “Berkeley Journal of International Law” 2013, vol. 31, no. 1, p. 92.

5 CESCR Committee, General Comment no. 15: The Right to Water (2003), E/C.12/2002/11, § 4.

6 N. Jackson, *United Nations Declares Internet Access a Basic Human Right*, in: “The Atlantic”, 3 June 2011, <https://www.theatlantic.com/technology/archive/2011/06/united-nations-declares-internet-access-a-basic-human-right/239911/>. J. Wilson, *United Nations Report Declares Internet Access a Human Right*, Time, 7 June 2011, <http://techland.time.com/2011/06/07/united-nations-report-declares-internet-access-a-human-right/> [access: 31.01.2018].

7 Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, 16 May 2011, A/HRC/17/27, § 78.

8 Ibidem, § 85

9 UN General Assembly, The promotion, protection and enjoyment of human rights on the Internet, 27 June 2016, A/HRC/32/L.20.

Some may express their doubts whether we are witnessing this process at all. The arguments of critics are well known and were pointed out by *inter alia* P. de Hert & D. Kloza¹⁰ or V. Cerf.¹¹ Nevertheless, those arguments did not stop the Human Rights Council from bringing up this issue in 2016 and adopting the abovementioned resolution without a vote.¹² Another sign that we may be witnessing this process is the presence of Internet-related issues in the works of the UN treaty-based bodies. Internet access is frequently mentioned by most of them in various contexts when formulating recommendations. Suffice to say that the Internet appears in those recommendations much more frequently than, for instance, electricity which is repeatedly claimed to be a service so necessary for human beings that it should be recognized as a separate human right.¹³ Even more compelling is the fact that the Internet-related recommendations formulated under the Universal Periodic Review (hereafter UPR) mechanism are as numerous as those related to the right to food and the right to water – both of which are relatively well-established human rights. For instance, in 2016 18 recommendations concerning the Internet were formulated, 21 regarding right to food and 31 related to the right to water.

Further parts of this study are devoted to a comprehensive analysis of the recommendations formulated by the UN treaty-based bodies in the period between 2007 and 2017. The results may shed new light on the scope and normative content of the potential right to Internet access as well as answer the question of whether we are indeed witnessing the process a new right being recognized. Section 2 of the study is devoted to a quantitative analysis of the concluding observations adopted by under the UN treaty-based reporting mechanisms, which is supplemented by the overview of the recommendations formulated within the UPR mechanism. Section 3 provides a detailed insight into the content of the recommendations (qualitative analysis). In Section 4 the author proposes that Article 15(1)b of the ICESCR (the right to benefit from scientific progress and its applications) is the provision that may serve as a legal departure point for the conceptualization of the right to Internet access.

10 P. De Hert, D. Kloza, *Internet (access) as a new fundamental right. Inflating the current rights framework?*, in: “European Journal of Law and Technology”, 2012, no. 3.

11 V. G. Cerf, *Why Internet Access is a Human Right: What We Can Do To Protect It*, in: “The New York Times”, 4 January 2012, <http://www.nytimes.com/2012/01/05/opinion/internet-access-is-not-a-human-right.html> [access: 31.01.2018].

12 UN General Assembly, The promotion, protection and enjoyment of human rights on the Internet, 27 June 2016, A/HRC/32/L.20.

13 S. Tully, *Access to Electricity as a Human Right*, in: “Netherlands Quarterly of Human Rights” 2006, vol. 24, no. 4, pp. 557–588. A. J. Bradbrook, J. C. Gardam, *Placing Access to Energy Services within a Human Rights Framework*, in: “Human Rights Quarterly” 2006, vol., pp. 389–415.

Statistics Don't Lie? Internet Access in the Works of UN Treaty-Based Bodies and the UPR

The issue of the Internet, in various contexts, appears in the concluding observations of the following committees: the Human Rights Committee (HR Committee), the Committee on Economic, Social and Cultural Rights (hereafter CESCR Committee); the Committee on the Elimination of Racial Discrimination (hereafter CERD Committee), the Committee on the Elimination of Discrimination against Women (hereafter CEDAW Committee), Committee on the Rights of the Child (hereafter CRC Committee), and the Committee on the Rights of Persons with Disabilities (hereafter CRPD Committee).¹⁴ All in all, between 2007 and 2017 committees mentioned the word 'Internet' in 246 recommendations. The most active in this matter is the CRC, with 154 recommendations¹⁵ while at the other extreme the Committee on Migrant Workers made only one recommendation.¹⁶ The busiest period for the committees was 2012 (44 recommendations) and 2013 (36 recommendations), which might have been a temporary effect the Frank La Rue's report adopted in May 2011. Interestingly, 2012 was also a the peak for the CRC's activity and the following years witnessed increasing interest in the nexus between human rights and the Internet among the other committees, mainly the CERD, CESCR, CEDAW and CRPD. In this light, 2017 is marked by shocking decline in addressing the implications of the Internet for human rights. There might be two explanations – either the issue of Internet access has finally been integrated into the existing human rights framework or we are undergoing a so-called 'Internet winter' and after a period of silence, the issue will be taken up again in the future.¹⁷

14 Two UN treaty bodies, namely the Committee against Torture (CAT) and the Committee on Migrant Workers (CMW), were excluded from detailed analysis due to their little interest in Internet-related issues. Nevertheless, the CAT Committee sometimes recommends that concluding observations as well as other documents and training tools be disseminated via the Internet (e.g. official websites). See: CAT Committee, Concluding observations: Germany (2011), CAT/C/DEU/CO/5, § 37.

15 This number does not include another 177 recommendations formulated by the CRC Committee within the monitoring procedures under the Optional Protocols to the Convention. They were excluded from statistics as they substantively overlap with recommendations adopted by the Committee under the procedure of monitoring the implementation of the CRC itself.

16 Committee recommended to guarantee the right to vote of Filipino migrant workers living abroad by introducing Internet voting. See: CMW Committee, Concluding observations on the second periodic report of the Philippines (2014), CMW/C/PHL/CO/2, § 39.

17 This thesis builds upon the analogy with the period of 'AI winter' in the 1980s. Progress in the development of artificial intelligence (AI) in the 1970s sparked optimism among the scientists, however the following decade failed to bring any breakthrough. It resulted in disillusionment and decreasing interest in the field of the AI. See: J. Hendler, *Where Are All the Intelligent Agents?*, "IEEE Intelligent Systems", 2007, vol. 22 no. 3, pp. 2–3 <https://doi.org/doi:10.1109/MIS.2007.62>. Some authors indicate that currently we are witnessing an 'AI spring'. J. Markoff, *Behind Artificial Intelligence, a Squadron of Bright Real People*, in "The New York Times", 14 Oc-

Committee	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	Overall
CRC	1	7	9	12	25	37	19	15	11	5	13	154
CERD	1	2	5	3	4	2	1	3	1	2	0	24
CEDAW	1	1	2	6	1	1	0	2	1	0	1	16
CCPR	2	2	2	0	2	3	0	1	0	0	0	12
CESCR	1	4	5	4	1	1	1	0	0	0	0	17
CRPD	3	5	0	2	1	0	0	0	0	0	0	11
CMW	0	0	0	1	0	0	0	0	0	0	0	1
CAT	0	0	0	1	2	0	4	1	0	0	1	9
HRC (UPR)	N/D	18	36	40	33	17	6	19	7	2	0	178
Overall	9	39	59	69	69	61	31	41	20	9	15	422

Table 1. The overall number of recommendations mentioning the word ‘Internet’ that were adopted by the UN treaty-based bodies and formulated by the states under the procedure of Universal Periodic Review in the period 2007–2017. The numbers reflect the total amount of recommendations that mentioned the Internet (i.e. it may have happened that one concluding observations includes more than one Internet-related recommendation).

One may say that the presented numbers are too scarce to make any argument regarding potential recognition of a new human right.¹⁸ Indeed, these numbers indicate that if we are witnessing any such process, we are at the very beginning. However, adding recommendations formulated during the interactive dialogue of the UPR almost doubles the number to 422. Interestingly, since 2014 there have been more recommendations concerning the Internet formulated under the UPR mechanism than within the reporting procedures under the respective human rights treaties. It seems that under the UPR this issue serves as a double-edged sword – democratic states urge autocratic states to ensure freedom of expression and access to information on the Internet (by *inter alia* the abolishment of censorship),¹⁹ while non-democratic regimes

tober 2005, <http://www.nytimes.com/2005/10/14/technology/behind-artificial-intelligence-a-squadron-of-bright-real-people.html> [access: 31:01.2018].

¹⁸ The amount of concluding observations that are adopted annually differs among UN treaty bodies. For instance, in case of CMW Committee this number does not exceed 10, for CESCR Committee and HR Committee it remains between 15 and 20, and the most active are CEDAW Committee, CERD Committee and CRC Committee with more than 20 (including concluding observations adopted within the reporting procedure under the Optional Protocols to the CRC, this amount almost doubles).

¹⁹ See for instance: HRC, Universal Periodic Review: Turkmenistan (2013), A/HRC/24/3, par. 112.62. HRC, Universal Periodic Review: Tajikistan (2016), A/HRC/33/11, § 118.56.

(e.g. Iran, China, Libya) recommend that Western democracies intensify efforts to combat xenophobia,²⁰ Islamophobic propaganda²¹ etc. in cyberspace. Approximately 68% of these recommendations were accepted by the states, which indicates the general consensus in this matter (to compare, the percentage of total recommendations accepted exceeded 66% at the end of 2017). Leaving aside numbers, it is worth investigating the content of the recommendations. As the UPR recommendations very frequently refer to or follow the ones adopted by the UN treaty-based bodies, further analysis will be limited to the latter.

The Content of Internet-Related Recommendations Formulated by the UN Treaty-Based Bodies

The CRC Committee most commonly urges state parties to combat child pornography and the sexual exploitation of children on the Internet (e.g. recruitment for prostitution), cyberbullying²² and grooming.²³ On various occasions the Committee has emphasized the necessity of adopting a law that specifies the obligations of Internet Service Providers (ISPs) if child pornography is detected²⁴ and of strengthening the mechanisms for monitoring and prosecuting ICT-related violations of children rights.²⁵ States parties frequently receive recommendations to educate children on Internet safety as well as to raise awareness among parents, guardians and teachers about opportunities and risks relating to the use of Internet and other ICT technologies, e.g. Internet addiction.²⁶

The second most active is the CERD Committee. It frequently recommends combating the proliferation of racism and hate speech in the media, particularly through the

20 HRC, Universal Periodic Review: Sweden (2015), A/HRC/29/13, par. 145.60, 145.76, 145.80, 147.13, 145.77.

21 HRC, Universal Periodic Review: Finland (2012), A/HRC/21/8, § 90.4.

22 CRC Committee, Concluding observations: Maldives (2016), CRC/C/MDV/CO/4–5, § 39.

23 CRC Committee, Concluding observations: Austria (2012), CRC/C/AUT/CO/3–4, § 32.

24 CRC Committee, Concluding observations: Malaysia (2007), CRC/C/MYS/CO/1, par. 102.

More detailed recommendations on this matter are formulated by the CRC within the reporting procedure under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. For instance, CRC Committee recommended to adopt legislation that requires ISPs, telephone service providers and banking services to report the detection of pornographic content involving children. See: CRC Committee, Concluding observations: Portugal (2014), CRC/C/OPSC/PRT/CO/1, § 30.

25 CRC Committee, Concluding observations: Sweden (2015), CRC/C/SWE/CO/5, § 25.

26 CRC Committee, Concluding observations: Republic of Korea (2012), CRC/C/KOR/CO/3–4, § 59.

Internet.²⁷ The Committee urged *inter alia* that relevant legislation should be adopted²⁸ (including criminal law provisions)²⁹, that social media should be monitored³⁰ or, where appropriate, that websites devoted to inciting racial discrimination should be blocked.³¹ The Committee encourages the active promotion of awareness of values such as diversity and non-discrimination by ISPs.³² Considering the report submitted by Turkmenistan in 2012, the Committee noticed that Internet-based sources (e.g. blogs, websites) play an important role in the promotion of human rights concerning minorities and thus the state should refrain from restricting access to these sources.³³

In the works of the CEDAW Committee, the Internet is considered as an important vehicle for the promotion of the Convention among women³⁴ and as a means of combating gender-based stereotypes.³⁵ The Committee is aware of the fact that many Internet-based sources portray women as sexual objects, but at the same time notes that technology provides innovative measures that can considerably enhance dissemination of the concepts such as the equality of women and men.³⁶ The Committee recommended on various occasions that countermeasures be taken against so-called 'Internet marriages' (Internet brides).³⁷ Only recently did the Committee notice the potentially beneficial influence of e-administration on women's health and recommended that the state party ensure that rural, elderly and marginalized women receive appropriate digital education and are therefore able to register for a health appointment via the Internet.³⁸ Moreover, the Committee stated that the Estonian government shall ensure that these groups have adequate Internet access.³⁹ When considering the report submitted by Ukraine, the Committee recommended improving the access of women and girls to the ICT by enrolling them in computer literacy programmes.⁴⁰

27 CERD Committee, Concluding observations: Serbia (2018), CERD/C/SRB/CO/2–5, par. 14.

28 CERD Committee, Concluding observations: New Zealand (2013), CERD/C/NZL/CO/18–20, § 9.

29 CERD Committee, Concluding observations: Germany (2008), CERD/C/DEU/CO/18, § 16.

30 CERD Committee, Concluding observations: Republic of Korea (2012), CERD/C/KOR/CO/15–16, § 10.

31 CERD Committee, Concluding observations: Germany (2015), CERD/C/DEU/CO/19–22, § 9.

32 CERD Committee, Concluding observations: Netherlands (2015), CERD/C/NLD/CO/19–21, § 12.

33 CERD Committee, Concluding observations: Turkmenistan (2012), CERD/C/TKM/CO/6–7, § 25.

34 CEDAW Committee, Concluding observations: Tuvalu (2009), CEDAW/C/TUV/2, § 18.

35 CEDAW Committee, Concluding observations: Malta (2010), CEDAW/C/MLT/CO/4, § 19.

36 CEDAW Committee, Concluding observations: Bolivarian Republic of Venezuela (2014), CEDAW/C/VEN/7–8, § 17.

37 CEDAW Committee, Concluding observations: Cameroon (2014), CEDAW/C/CMR/CO/4–5, § 21. CEDAW Committee, Concluding observations: Senegal (2015), CEDAW/C/SEN/3–7, § 23.

38 CEDAW Committee, Concluding observations: Estonia (2016), CEDAW/C/EST/CO/5–6, § 31(d).

39 Ibid.

40 CEDAW Committee, Concluding observations: Ukraine (2017), CEDAW/C/UKR/8, § 37(e).

The CRPD Committee has only recently recognized the vast opportunities that the Internet brings for persons with disabilities, but was among most active in this matter in 2016 and 2017. The majority of recommendations concern dissemination of the concluding observations *inter alia* via Internet (in accessible formats).⁴¹ However, there are also numerous recommendations urging that access to information be provided for persons with disabilities via the Internet on an equal basis with others (so-called web accessibility).⁴² Considering the report submitted by Canada, the Committee recommended promoting and facilitating the use of accessible formats, modes and means of communication as well as to provide software and assistive devices to all persons with disabilities.⁴³ Moreover, the Canadian government was encouraged to redouble its efforts to ensure that services offered by the private entities through the Internet remain accessible to all.⁴⁴

Paradoxically, although the Internet is frequently classified as a means of communication, the HR Committee relatively rarely formulates recommendations that refer to the ICT. Nearly all of them concern the tension between combating racial and religious hatred and the freedom to seek, receive and impart information.⁴⁵ Interestingly, only once has the Committee pointed out the implications of Internet use on privacy.⁴⁶ On one occasion the Committee stressed the role of social networks in exercising the right to freedom of expression.⁴⁷

The CESCR Committee brought up the issue of the Internet in 2013 and since then remains among the most active UN treaty-based bodies in this matter. The Committee's recommendations can be grouped into two categories. The first one considers the Internet from the perspective of the right to education and the second one through the prism of cultural rights. Regarding the obligations derived from the right to education, the Committee recommended setting up educational and information centers that focus on the use of ICT and the Internet,⁴⁸ in particular for disadvantaged and marginalized groups, e.g. indigenous peoples⁴⁹ or people living in

41 CRPD Committee, Concluding observations: Honduras (2017), CRPD/C/HND/CO/1, § 74.

42 CRPD Committee, Concluding observations: Republic of Korea (2014), CRPD/C/KOR/CO/1, par. 18. CRPD Committee, Concluding observations: Armenia (2017), CRPD/C/ARM/CO/1, § 36.

43 CRPD Committee, Concluding observations: Canada (2017), CRPD/C/CAN/CO/1, § 40(b).

44 Ibidem, § 40(c).

45 HR Committee, Concluding observations: Bosnia and Herzegovina (2017), CCPR/C/BIH/CO/3, § 22. HR Committee, Concluding observations: Cameroon (2017), CCPR/C/CMR/CO/5, § 42.

46 HR Committee, Concluding observations: Islamic Republic of Iran (2011), CCPR/C/IRN/CO/3, § 27.

47 HR Committee, Concluding observations: Tajikistan (2013), CCPR/C/TJK/CO/2, § 22.

48 CESCR Committee, Concluding observations: Ecuador (2012), E/C.12/ECU/CO/3, § 34.

49 CESCR Committee, Concluding observations: Guatemala (2014), E/C.12/GTM/CO/3, § 27.

rural and remote areas.⁵⁰ The Committee recognized on various occasions the beneficial effect of the Internet on the enjoyment of cultural rights. Thus, the Committee recommended expanding the availability of the Internet across the country⁵¹ and intensifying efforts aimed at expanding broadband Internet access, in particular to rural areas.⁵² In 2011 the Committee urged that the practice of censoring electronic communication and blocking of the Internet should cease. In the following years the Committee stressed that respect for the freedom of expression is a precondition for enjoying the right to take part in cultural life.⁵³

Analysis of the recommendations formulated by the UN treaty bodies indicates that we can distinguish two major dimensions of Internet access: freedom of expression in cyberspace (covered mostly by the CRC, CERD, CRPD, CCPR and CEDAW Committees) and physical access to the Internet (covered mostly by the CESC, CRPD and CEDAW Committees). The latter encompasses infrastructure (e.g. broadband infrastructure), various facilities (e.g. educational and information centers), services (e.g. e-administration, e-voting) and technological accommodations (e.g. assistive devices for persons with disabilities). Although recommendations concerning freedom of expression on the Internet prevail in terms of quantity, however, the second group has been rapidly increasing since 2014. Moreover, under the UPR mechanism there are state delegations that formulate recommendations regarding the expansion the Internet infrastructure.⁵⁴

Internet Access as a Human Right – Do We Have any Legal Grounds?

Assuming that we are indeed witnessing the process of a new human right being recognized, one may ask for the legal grounds in the existing international human rights law. Undoubtedly, having a legal foothold in the international human rights treaty that encompasses both dimensions of Internet access makes it more likely to happen. As the analysis of the works of the CESC Committee has shown, obligations derived from the so-called cultural rights (Art. 15 of the ICESC) have already been interpreted widely enough for the purpose of defining a right to Internet access. The Committee

50 CESC Committee, Concluding observations: Poland (2016), E/C.12/POL/CO/6, § 56.

51 CESC Committee, Concluding observations: Lithuania (2014), E/C.12/LTU/CO/2, § 25.

CESC Committee, Concluding observations: Uzbekistan (2014), E/C.12/UZB/CO/2, § 26.

52 CESC Committee, Concluding observations: Ireland (2013), E/C.12/IRL/CO/3, § 34.

53 CESC Committee, Concluding observations: Sudan (2015), E/C.12/SDN/CO/2, § 56.

54 HRC, Universal Periodic Review: Rwanda (2016), A/HRC/31/8, § 133.34. HRC, Universal Periodic Review: Cuba (2013), A/HRC/24/16, § 170.196, § 170.198. HRC, Universal Periodic Review: Turkmenistan (2013), A/HRC/24/3, § 112.65.

frequently stresses the importance of freedom of expression in exercising cultural rights and on various occasions specifically addressed the Internet.⁵⁵ The activity of the Committee is even greater in the case of expanding infrastructure across the country⁵⁶ and ensuring affordability of Internet access.⁵⁷

It may be that hitherto forgotten Art. 15(1)b of the ICESCR that established the right to benefit from scientific progress and its applications (hereafter RBSP) will be rediscovered for this purpose. By now, there is neither a General Comment providing the Committee's interpretation, nor much interest from the academics in this matter.⁵⁸ In 2009 a group of experts adopted the Venice Statement on the Right to Enjoy the Benefits of Scientific Progress and its Applications that sheds some light on the normative content of Art. 15(1)b, however the document includes – as the authors stressed at its very beginning – only preliminary findings and proposals.⁵⁹ Although the document does not mention *expressis verbis* the Internet, it refers to the applications of scientific progress and the Internet is undoubtedly one of them. Thus, if the right to Internet access is ever to be recognized, it may emancipate from the RBSP – as was the case with the emancipation of the right to water from the right to an adequate standard of living (Art. 11 of the ICESR).

Concluding Remarks

As the analysis has shown, the Internet is a matter of concern for the UN treaty-based bodies. Although the Internet is a relatively new technology, the number of recommendations concerning it is much higher than those addressing, for instance, access to electricity. Although recommendations formulated in the context of other “emancipated” rights, namely the right to food and the right to water, are being adopted by the UN treaty-based bodies more frequently, this difference almost completely disappears in the case of the UPR recommendations. As under the UPR procedure there are representatives of states, not the group of independent experts,

55 CESCR Committee, Concluding observations: Sudan (2015), E/C.12/SDN/CO/2, § 56. CESCR Committee, Concluding observations: Turkmenistan (2011), E/C.12/TKM/CO/1, § 29.

56 CESCR Committee, Concluding observations: Philippines (2016), E/C.12/PHL/CO/5–6, § 58. CESCR Committee, Concluding observations: Kenya (2016), E/C.12/KEN/CO/2–5, § 62.

57 CESCR Committee, Concluding observations: Gambia (2015), E/C.12/GMB/CO/1, § 29.

58 There are, nevertheless, some studies. See: Audrey R. Chapman, Towards an Understanding of the Right to Enjoy the Benefits of Scientific Progress and Its Applications, *Journal of Human Rights*, 2009, 8, pp. 1–36.

59 Venice Statement on the Right to Enjoy the Benefits of Scientific Progress and its Applications, adopted during the conference that was held in Venice, Italy on 16–17 July 2009. For the full text vid.: https://www.aaas.org/sites/default/files/VeniceStatement_July2009.pdf.

who are formulating recommendations, the emphasis that is being put on Internet-related issues indicates the growing consensus of the states on the scope of treaty-based obligations related to this new technology. Moreover, those recommendations are not limited to the duty of non-interference, but stress the necessity of expanding Internet infrastructure, ensuring its affordability, and the importance of building digital literacy in the society, particularly in the most disadvantaged and marginalized groups. Of course, it may take years, or even decades, until international community finally defines the normative content of the new right, nevertheless current developments allow us to claim that we may be indeed witnessing a process of a new human right being recognized, or rather forged.

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SUMMARY

**Internet Access as a New Human Right?
State of the Art on the Threshold of 2020**

The aim of this study is to analyze the role that the Internet plays in the enjoyment of human rights and answer the question of whether we may be in the process of recognizing a new right, namely the right to Internet access. The conclusions are built upon a quantitative and qualitative analysis of the Internet-related recommendations adopted by the UN treaty-based bodies in the period between 2007 and 2017. Moreover, the paper is supplemented by a brief overview of the relevant recommendations formulated under the mechanism of the Universal Periodic Review. Analysis of the content of recommendations allowed them to be classified into two groups – the first one integrates recommendations that refer to the duty of non-interference, and the second concerns the duty to expand Internet infrastructure across the country. The article ends with a call for further investigation of the normative potential of Article 15(1)b of the International Covenant on Economic, Social and Cultural Rights, as this hitherto forgotten provision might shed a new light on the proposed right to Internet access.

Keywords: Internet access, human rights, cultural rights, right to benefit from scientific progress and its applications

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